

Dear _____ :

This responds to your letter dated December 2, 2008, and supplemental information, requesting a ruling on whether you (Taxpayer) may exclude gain on the sale of your principal residence under § 121 of the Internal Revenue Code (Code).

FACTS

Taxpayer owned and occupied Residence for about 20 years before Month A. In Month A, Taxpayer moved out of Residence, and in Month B Taxpayer hired a contractor to make improvements to Residence. Shortly after the contractor began work, the contractor discovered a previously concealed Hazard. As required by State law, Taxpayer could not continue work on the residence until Hazard was removed. In Month C, Hazard was removed and construction on the improvements resumed. In Month D, after the improvements were completed, Taxpayer listed Residence for sale. Taxpayer sold Residence in Month E.

LAW AND ANALYSIS

Section 121(a) provides that gain from the sale of property is not included in gross income if, during the five-year period ending on the date of the sale, the taxpayer has owned and used the property as the taxpayer's principal residence for periods aggregating two years or more. Section 121(b)(1) provides that the maximum exclusion amount is \$250,000 (\$500,000 in most cases if a husband and wife file a joint return).

CONCLUSION

Based on the representations made and information submitted by Taxpayer, Taxpayer met the requirements of § 121(a) until Month D. Taxpayer owned and used Residence as her principal residence for more than 2 years out of the 5 years from March E to Month E. Accordingly, subject to the other requirements in § 121, Taxpayer may exclude the entire gain on the sale of Residence under § 121(a).

CAVEATS

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Except as expressly provided, we express no opinion concerning the tax consequences of any aspect of any item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the provisions of a power of attorney currently on file in our office, we are sending this letter and a letter showing proposed § 6110 deletions to Taxpayer's authorized representative.

If you have any questions, please contact the individual whose name and telephone number are found in the heading of this letter.

Sincerely yours,

Donna Welsh
Senior Technician Reviewer,
Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure: Copy for § 6110 purposes